

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 97-239-C

IN THE MATTER OF:)	
)	
Intrastate Universal Service Fund)	PETITION FOR RECONSIDERATION
<hr/>)	OF ORDER NO. 2004-452

Elliott F. Elam, Jr., Acting Consumer Advocate for the State of South Carolina, respectfully petitions the South Carolina Public Service Commission (Commission) for reconsideration of its Order No. 2004-452 in the above referenced proceeding and represents as follows:

1. Elliott F. Elam, Jr. is the duly appointed and qualified Acting Consumer Advocate for the State of South Carolina. Pursuant to S.C. Code Ann. § 37-6-604 (2002), and the Commission's Rules of Practice and Procedure, S.C. Code Ann. Regs. 103-830 et seq., (1976), the Consumer Advocate intervened as a formal party of record in Docket No. 97-239-C.

2. In Order No. 2004-452, issued on September 28, 2004, the Commission approved an increase of roughly \$4.2 million in th amount of the intrastate Universal Service Fund (USF), based on requests by 5 incumbent local exchange carriers (ILECs) to lower certain rates and to recover the lost revenues from the fund. The Consumer Advocate received a copy of the Order on October 7, 2004.

3. As permitted by S.C. Code Ann. § 58-9-1200 (1976), and § 1-23-380 (1986), and the Commission's Rules of Practice and Procedure, S.C. Code Ann. Regs. 103-836, 103-842 and 103-881, the Consumer Advocate respectfully petitions the Commission for reconsideration of the following errors. Each error cited constitutes arbitrary and capricious action in violation of

Chapter 5 Title 58, and Chapter 23 Title 1 of the Code of Laws of South Carolina and is an abuse of discretion. In addition, each error violates the Due Process and Equal Protection Clauses of the Constitutions of the United States and South Carolina.

4. In Order No. 2004-452, the Commission reaffirmed its findings from prior orders concerning the USF. Order at 14-15. The Commission noted that those prior determinations have been affirmed by the Circuit Court, and is on appeal to the Supreme Court. However, as argued in the Consumer Advocate's Brief to this Commission, the Companies case in this phase of the USF proceeding suffers from the same legal infirmities as set forth in the Consumer Advocate's appeal of Commission Order Nos. 98-322, 2001-419, 2001-704, 2001-996 and 2001-1088 which is currently pending before the South Carolina Supreme Court, and the appeal of Commission Order Nos. 2003-215 and 2003-345 which are currently on appeal in the Richland County Court of Common Pleas. The legal arguments set forth in the Consumer Advocate's briefs before the Supreme Court are hereby incorporated into this Petition for Reconsideration by reference. These include, but are not limited to, violations of S.C. Code Ann. § 58-9-280(E) regarding failure to properly allocate the costs associated with the local loop to all services; violation of 47 U.S.C. § 254(k) for failure to properly allocate the costs associated with the local loop to all services; and violations of FCC Separations requirements set forth at 47 C.F.R. Part 36.

5. In Order No. 2004-452, the Commission found that the amount of funding requested by the 5 companies in this case, when combined with the funding received from the first phase, does not exceed 2/3 of the company-specific state USF for each respective company. ¶7 at 20. In addition, the Commission found that the amount of funding requested by Alltel, Hargray and Horry, when combined with the funding received from the first phase, does not

exceed 1/3 of the company-specific state USF for each respective company, and therefore, these companies are not required to update the results of their cost studies for basic local exchange service. ¶8 at 20. These findings are not supported by the evidence in this case. At no time, and in no prior order in this case has the Commission actually determined a total amount for the USF or any company-specific amount for the USF. Therefore, it is error to make a finding that the amounts requested by the LECs do not exceed 1/3 or 2/3 of the total, when there has been no determination as to what the total is. For this reason, the Companies case in this phase of the proceeding is contrary to the Commission's prior orders, and cannot be approved.

6. In Order No. 2004-452, the Commission approved the companies' requests for additional USF funding, despite the fact that there was no evidence of record to support the large percentage increases in access line costs reported by the companies in their filings. There is no evidence to justify these large increases. Notably, the access line costs for Home Telephone are 26% higher than they were in 1997, and the line costs for Horry Telephone have risen 32% over that same period. For an industry whose costs are generally decreasing due to technological advances, these increases are inexplicable absent measures taken by these companies to improve their networks to make them capable of providing advanced competitive services such as DSL and video services. These increases were not explained at all in the filing or testimony in this case. On cross-examination, the witness for these companies could not explain these increases. Such advanced services do not fall under the definition of universal service and cannot be supported by USF funding.

WHEREFORE, PETITIONER PRAYS THIS HONORABLE COMMISSION:

to provide a reconsideration, and an opportunity to be heard on the matters set forth above.

Respectfully submitted,

Elliott F. Elam, Jr.
Acting Consumer Advocate

Hana Pokorna-Williamson
Staff Attorney

By:

S.C. Department of Consumer Affairs
3600 Forest Drive 3rd Floor
P.O. Box 5757
Columbia, S.C. 29250-5757
(803) 734-4189

October 13, 2004

CERTIFICATE OF SERVICE

This is to certify that I, Elliott F. Elam, Jr., have served this day the foregoing **Petition for Reconsideration of Order No. 2004-452** upon the persons named below, at the addresses set forth, by deposit in the United States mail, postage prepaid.

F. David Butler, Esquire
S.C. Public Service Commission
P.O. Drawer 11649
Columbia, SC 29211

M. John Bowen, Jr., Esquire
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
P.O. Box 752
Columbia, SC 29202

Steven W. Hamm, Esquire
Richardson Plowden Carpenter & Robinson
P.O. Drawer 7788
Columbia, SC 29202

Frank R. Ellerbe, III, Esquire
Robinson, McFadden & Moore, P.C.
P.O. Box 944
Columbia, SC 29202

Darra W. Cothran, Esquire
Woodward, Cothran & Herndon
P.O. Box 12399
Columbia, SC 29211

Gene V. Coker, Esquire
AT&T-Law & Government Affairs
1200 Peachtree St., NE Suite 8100
Atlanta, GA 30309

John F. Beach, Esquire
Ellis, Lawhorne & Sims, PA
P.O. Box 2285
Columbia, SC 29202

Faye A. Flowers, Esquire
Parker, Poe, Adams & Bernstein, LLP
P.O. Box 1509
Columbia, SC 29202-1509

John M.S. Hoefer, Esquire
Willoughby & Hoefer, PA
P.O. Box 8416
Columbia, SC 29202-8416

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC 29205

Susan B. Berkowitz, Esquire
SC Appleseed Legal Justice Center
P.O. Box 7187
Columbia, SC 29202

Nanette Edwards
ITC DeltaCom Communications, Inc.
4092 South Memorial Parkway
Huntsville, AL 35802

Robert D. Coble, Esquire
Nesen, Pruett, Jacobs & Pollard
P.O. Drawer 2426
Columbia, SC 29202-2426

Robert E. Tyson, Jr.
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211

Craig K. Davis, Esquire
1420 Hagood Ave.
Columbia, SC 29205

October 13, 2004
Columbia, South Carolina